

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA06-884

February 28, 2007

LESLIE HUNTER and
ALLEN HUNTER
APPELLANTS

AN APPEAL FROM THE
INDEPENDENCE COUNTY
CIRCUIT COURT
[JV-05-203]

v.

HON. STEPHEN CHOATE, JUDGE

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES
APPELLEE

AFFIRMED; MOTION TO BE
RELIEVED, GRANTED

Following the termination of the parental rights of appellants Leslie and Allen Hunter, and pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004) (*Linker-Flores I*) and Arkansas Supreme Court Rule 4-3 (j), counsel for the Hunters filed a motion to be relieved as counsel, asserting that after a conscientious examination of the record, she believes that any argument made on appeal would be wholly without merit and completely frivolous. Counsel's accompanying brief purports to list all adverse rulings against the Hunters with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The Hunters were notified of their right under Supreme Court Rule 4-3(j) (2) to file pro se points on their own behalf, and Leslie Hunter filed what she contends to be pro se points, claiming that the trial court erred in

terminating her parental rights. We affirm the trial court's termination of the Hunters's parental rights, and we grant their attorney's motion to be relieved.

This case originated on September 21, 2005, when C.H., d.o.b. 08/31/05, was removed from the Hunters' home after ADHS received two reports from the Child Abuse Hotline alleging environmental neglect and inadequate supervision. The affidavit accompanying the petition for emergency custody stated that Leslie was severely schizophrenic and was not taking her medication; that when the ADHS worker went to the home, there was a strong odor of cat urine; that Leslie got upset and began squeezing C.H. tightly to her chest when the worker started asking questions; that Leslie again got upset when the worker asked that she not hold the baby so tightly; that the bedroom was cluttered and no sheets were on the Hunters' bed; that the dresser was full of dirty baby clothes, some with old dried human feces; that the worker observed Leslie to be irrational, emotionally unstable, and unable to adequately care for C.H.; that Allen stated that Leslie did not need to be on any medications, although it was known that she had a history of mental illness; and that C.H. had to be removed for his safety.

On December 2, 2005, ADHS filed a petition for termination of parental rights to C.H., alleging (1) that on June 16, 2004, the Hunters had their parental rights involuntarily terminated as to C.H.'s sibling, D.H., d.o.b. 12/20/02, and (2) that subsequent to the filing of the original dependency-neglect petition, other factors had arisen that demonstrated that it would be contrary to C.H.'s safety and welfare to be returned to the care of his parents. The petition also alleged that ADHS had an appropriate placement plan and that it was in the best interest of C.H. for parental rights to be terminated.

At the February 16, 2006, termination hearing, testimony revealed that Allen was currently incarcerated for several parole violations, including testing positive for methamphetamine. Allen admitted to getting drunk on occasion and “hollering” at Leslie and threatening to harm her or kill her; to being on the sex offender roster, although he claimed that he was never convicted of any sex offense and wanted his name expunged from the list; to taking Ritalin and Seroquel to stop his hyperactivity; and to taking Risperdal, a medicine that helped him relax, sleep at night, and keep from hearing voices. Allen stated that he had been hearing both “good” and “demon” voices for three years, explaining that Leslie’s dead grandfather would tell him to take good care of his granddaughter, while the voices of Leslie’s brother and sister-in-law, Booger and Amy, would tell him to torture Leslie. Still, other “unknown” voices would tell Allen to torture Amy and Booger because they had caused him pain by performing “voodoo” on him. Allen stated that he did not act on what the voices told him because he was in prison and that the medicine helped quiet the voices. Allen asserted that he would help Leslie take her medicine if doctors discovered that she had psychological problems; however, he stressed that Leslie was not mentally ill and was one of the “smartest” people he had ever known.

Evidence revealed that Leslie suffered from severe mental illness. Leslie’s testimony consisted mostly of heavy breathing and numerous rambling statements to the court. On several occasions, Leslie had to be admonished to answer the questions because she would often ask questions of her own or answer questions not asked of her. Leslie also often had to be quieted by Allen or the court to stop her tirades. Leslie stated that she had several physical health problems, although she wondered aloud what those problems had to do with anything. She also affirmed that she had been committed to mental hospitals by court order on seven or eight occasions for “very

short periods of time.” She claimed that she had no mental health issues, but had “spiritual issues.” She explained that the spirits were good spirits that came to heal her when she had breathing problems. She testified that she had seen a lot of bad spirits lately and that everyone who did not care about her or the baby had a bad spirit with them. Leslie then stated that she had many problems with Booger and Amy because Amy was jealous of her, and she accused Amy of “ruining her looks” by using voodoo. Leslie further testified that police officers had informed her that they found a “voodoo brain” at Booger and Amy’s house. She claimed that the voodoo caused her brain to hurt and was meant to hurt her babies while she was pregnant. Leslie claimed that she did not need to take any medications and that when she stopped taking the medicines that had been prescribed to her, she lost a lot of weight.

Roberta Long, a family service worker with ADHS, testified that the Hunters’ first child, D.H., was removed because Leslie refused to take her medicine even though she had been diagnosed with schizophrenic paranoia. Long stated that ADHS had made meaningful efforts to rehabilitate the home when D.H. was removed, and again when C.H. was removed, but the conditions had yet to be remedied. ADHS had provided homemaker services, referrals to HUD, referrals for employment, therapy, drug abuse treatment, and mental health treatment.

Janette Jarchow, a ADHS employee, testified that she had no doubt that Leslie loved C.H. and asserted that Leslie sometimes exhibited positive motherly parenting skills, like changing diapers and fixing formula. She was especially delighted that Leslie would hold C.H. because Leslie would not hold D.H. Jarchow, however, believed that Leslie lacked some essential skills, especially with regard to communication. She testified that Leslie did not interact well with C.H.; that Leslie was often jerky with her movements and would seem lost when C.H. would get fussy or cry; and that

Leslie spoke to C.H. in an age-inappropriate manner. Jarchow also stated that Leslie used inappropriate language in front of the child and that Leslie often did inappropriate things like try to make the baby sit up when he was physically unable to do so.

On March 15, 2006, the court entered an order terminating the Hunters' parental rights to C.H. and granting ADHS the power to consent to an adoption. The court found that it was contrary to C.H.'s best interests, health, safety, and welfare to return him to the custody of his parents, noting that Allen had been incarcerated throughout much of the pendency of the case and had testified that, without medication, he heard voices that instructed him to torture people. In addition, Leslie had proven to be "uncooperative" and "hostile" throughout her entire testimony and the evidence showed that she did not properly interact with or care for C.H.

The appointed counsel for an indigent parent on a first appeal of termination of parental rights may petition the court to withdraw as counsel if, after a conscientious review of the record, counsel can discern no meritorious grounds for appeal. *Linker-Flores I, supra*. Requests for permission to withdraw as counsel on the ground that the appeal is without merit shall be accompanied by a brief that must contain an argument section listing "all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal." Ark. Sup. Ct. R. 4-3-(j) (1) (2005). When evaluating a no-merit brief, the court needs to decide whether the appeal is wholly frivolous or whether there are any issues of arguable merit for appeal. *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, ---S.W.3d--- (2005) (*Linker-Flores II*). The court must make a conscientious review of the record, examining all pleadings and testimony on the question of sufficiency of the evidence supporting the decision to terminate and those adverse rulings arising

from or incorporated into the termination proceeding. *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 245, --- S.W.2d --- (2005).

Under Ark. Code Ann. § 9-27-341(b) (Supp. 2005), the court may terminate parental rights if there is an appropriate permanency placement plan for the child and there is clear and convincing evidence that termination of parental rights is in the best interest of the child. Clear and convincing evidence is that degree of proof that produces a firm conviction in the fact finder as to the allegation sought to be established. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W. 3d 391 (2005).

On appeal, an order of parental termination is reviewed de novo and will not be reversed unless clearly erroneous. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Camarillo-Cox, supra*. In resolving the clearly erroneous question, we must give due regard to the opportunity of the chancery court to judge the credibility of witnesses. *Id.* Additionally, in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations. *Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

The trial court can terminate parental rights upon a finding of the following grounds:

(vii) (a) That other facts or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent. . .

(ix) (a) (4) [The parents] have had his or her parental rights involuntarily terminated as to a sibling of the child;

§ 9-27-341(b)(3)(B).

Counsel's motion was accompanied by a brief discussing the sufficiency of the evidence to support the order terminating the Hunters' parental rights to C.H. and listing all adverse rulings made at the termination hearing, explaining why none are meritorious grounds for reversal. After a careful examination of the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases, and we hold that this appeal is wholly without merit. Although Leslie filed pro se points for reversal, her filing is simply a letter beseeching this court to return C.H. because he "belongs at home." The letter contains the same testimony she presented to the trial judge and does not present any arguments different from the ones already discussed in counsel's brief. This court does not make factual determinations, and credibility issues are left within the sound discretion of the trial judge. *Camarillo-Cox, supra*.

Accordingly, we affirm the order terminating the Hunters' parental rights, and we grant counsel's motion to be relieved.

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.